

48A C.J.S. Judges § 52

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

B. Power to Fix and Alter Term

§ 52. Generally

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West's Key Number Digest

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The power to fix and alter the terms of judicial officers must be exercised by authority of law.

The power to fix the duration of the official terms of judicial officers must be exercised by authority of law.¹ Thus, the term of the office of a judge may be changed by constitutional amendment.² When the constitution ordains that a judge hold his or her office for a fixed term, the constitution governs, and the legislature has no power to alter such term,³ either by enlarging⁴ or shortening⁵ the term, directly⁶ or indirectly,⁷ even to prevent a vacancy.⁸ The legislature may, however, by force of constitutional provision in some jurisdictions, be authorized to fix or alter the terms of some judicial offices.⁹ When the constitution is silent, the legislature may generally fix the term.¹⁰ Additionally, if the office is created by the legislature under due authority, it may also fix the term¹¹ and alter it.¹²

A governor cannot enlarge the official term of a judge by the terms of his or her commission.¹³ Where a judge in office is reappointed as his or her own successor, the judge cannot change the term of office prescribed by law by a failure to apply for a second commission and to qualify for same.¹⁴ Where the office of a municipal judge is considered a state office, and the officer of same a state officer, the term of such municipal judge cannot be altered by the municipal authorities.¹⁵

Term limit provision.

A state constitution's term-limit provision for state offices and local governing bodies may not apply to judicial officers.¹⁶

Footnotes

1 Or.—*State ex rel. Wernmark v. Hopkins*, 213 Or. 669, 327 P.2d 784 (1958).

2 W. Va.—*State ex rel. Casey v. Pauley*, 158 W. Va. 298, 210 S.E.2d 649 (1975).

Prospective application

An amendment extending the terms of office is not applicable to judges who began their terms before the effective date of the amendment.

Fla.—*In re Advisory Opinion to the Governor-Terms of County Court Judges*, 750 So. 2d 610 (Fla. 1999).

3 Conn.—*Adams v. Rubinow*, 157 Conn. 150, 251 A.2d 49 (1968).

4 Ark.—*Burris v. Britt*, 281 Ark. 225, 663 S.W.2d 715 (1984).

Judge is "public officer"

A judge is a public officer within the meaning of a constitutional prohibition against extending the term of any public officer.

Del.—*Lee v. State Bd. of Pension Trustees*, 739 A.2d 336 (Del. 1999).

5 N.C.—*State ex rel. Martin v. Preston*, 325 N.C. 438, 385 S.E.2d 473 (1989).

6 Pa.—*Commonwealth ex rel. Barratt v. McAfee*, 232 Pa. 36, 81 A. 85 (1911).

7 Mass.—*Opinions of the Justices to the Senate*, 372 Mass. 883, 363 N.E.2d 652 (1977).

8 Idaho—*Tway v. Williams*, 81 Idaho 1, 336 P.2d 115 (1959).

As to the power of the legislature to alter the term of a judge in office, see § 53.

9 Tenn.—*Dehoff v. Attorney General*, 564 S.W.2d 361 (Tenn. 1978).

10 Ill.—*People ex rel. Bua v. Powell*, 39 Ill. 2d 202, 234 N.E.2d 801 (1968).

11 R.I.—*Gorham v. Robinson*, 57 R.I. 1, 186 A. 832 (1936).

12 Ind.—*Harrison v. Alexander*, 224 Ind. 450, 68 N.E.2d 784 (1946).

13 Ga.—*Roan v. Rogers*, 201 Ga. 696, 40 S.E.2d 551 (1946).

14 Ga.—*Anderson v. Ryan*, 82 Ga. 559, 9 S.E. 331 (1889).

15 Minn.—*State ex rel. Peterson v. Bensel*, 194 Minn. 55, 259 N.W. 389 (1935).

16 Nev.—*In re Contested Election of Mallory*, 282 P.3d 739, 128 Nev. Adv. Op. No. 41 (Nev. 2012).

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